# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD SCOTT COHEELY Claimant	)
VS.	) ) Docket No. 225,598
THE ENERGY CENTER Respondent	)
AND	) )
KANSAS BUILDING INDUSTRY WORKERS	, )
COMPENSATION FUND Insurance Carrier	)

#### ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict wherein claimant was granted benefits in the form of temporary total disability compensation and medical care resulting from an injury occurring on August 1, 1997.

#### ISSUES

Respondent raises the following issues for Appeals Board consideration:

- "a. Whether the claimant was reasonably seeking medical treatment for an alleged work related accident and whether he was injured in the course of seeking such treatment so as to constitute an injury arising out of and in the course of his employment with the respondent.
- "b. Whether the claimant is entitled to an order for temporary total disability compensation for a two week period at the rate of \$266.80 per week.

"c. Any and all other issues that can be brought before the Board on appeal of the December 2, 1997 Order of Administrative Law Judge Bryce Benedict."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds that issues b and c are nonjurisdictional issues and will not be considered by the Appeals Board pursuant to an appeal from a preliminary hearing order. See K.S.A. 44-534a, as amended, and K.S.A. 44-551, as amended.

With regard to whether claimant suffered accidental injury arising out of and in the course of his employment, the Appeals Board finds that the Order of the Administrative Law Judge should be affirmed for preliminary hearing purposes.

This case is hotly disputed regarding whether claimant suffered an initial injury while being exposed to muriatic acid at his place of employment. While there are several discrepancies in the record regarding what claimant may or may not have alleged after the incident and at the emergency room, there is also evidence in the record to show that claimant was exposed to muriatic acid and did suffer some symptomatology as a result. In addition, while he was at the emergency room being treated, claimant fell off a gurney and suffered an additional injury to his back which would also be compensable and was so found in the Appeals Board's November 25, 1997, Order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated December 2, 1997, should be, and is hereby, affirmed.

## IT IS SO ORDERED.

Dated this	day o	of January	1998.
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#### **BOARD MEMBER**

c: Walter P. Robertson, Junction City, KS
Matthew S. Crowley, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director